

Remarks/Arguments:

Claims 1-15, 17, and 18 were the pending claims in this application. With this amendment, claim 17 is cancelled. Therefore, claims 1-15 and 18 are now the pending claims in this application.

Applicants' representatives thank Examiner McDonough for the courtesy extended to them during the telephonic interview on June 21, 2010. In particular, Applicants appreciate Examiner McDonough's explanation of the Office's understanding of the prior art in view of the scope of the claims. As suggested by the Examiner during the interview, the claims have been amended to limit the ratio of base to acid to an equivalents ratio instead of a molar ratio. As discussed, this amendment is supported in the original specification.

The standard for written description is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See M.P.E.P. 2163.02 and *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). Moreover, the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. Thus, the amendment is supported in the original specification because a skilled person would recognize that the ratio of equivalents of base to -COOH acid equivalents of the acid would be readily discernable to a skilled artisan based on the molar ratios provided and the acid and base selected. Accordingly, a skilled artisan would reasonably appreciate a ratio of equivalents of base to -COOH acid equivalents of the 2-hydroxy carboxylic acid in the range 0.0033 - 0.2:1, e.g., for a tribasic acid containing three acid groups using a molar ratio of 0.01 - 0.6:1.

Accordingly, claim 1 is currently amended. Support for the amendment may be found at page 3, lines 6-8 and the examples of the original specification. No new matter has been added.

Abstract

The abstract has been amended consistent with the claim amendments. No new matter has been added.

Rejections under 35 U.S.C. § 103

Claims 1-6 stand rejected under 35 U.S.C. § 103 as obvious over European Patent No. 0 812 818 (Ridland et al.). Applicants traverse this rejection and submit that the currently pending claims are patentable over the cited reference for lack of a *prima facie* case of obviousness because Ridland et al. fails to teach or suggest the ratio of equivalents of base to -COOH acid equivalents of the 2-hydroxy carboxylic acid is in the range 0.0033 - 0.2:1.

"To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. §2143.

Ridland et al. suggests an amount of base used to neutralize a monobasic acid could be as low as 0.8 moles per mole of base. Additionally, Ridland et al. describes that "in the case of citric acid (a tribasic acid), the preferred amount [of base] is in the range of 1 to 3 moles base per mole of 2-hydroxyl acid." As is known to one of ordinary skill in the art, an acid equivalent is equal to one mole of H⁺ or H₃O⁺ ions, and a base equivalent is equal to one mole of OH⁻ ions. Thus, citric acid, a tribasic acid containing three carboxylic acid groups (-COOH), would require three "base equivalents" or equivalents of base per carboxylic acid group to be neutralized. Therefore, Ridland et al. contemplates that more base would be required, not less. Accordingly, Ridland et al. fails to establish a *prima facie* case of obviousness for the ratio of equivalents of base to -COOH acid equivalents of the 2-hydroxy carboxylic acid in the range 0.0033 - 0.2:1.

Therefore, it is respectfully submitted that Independent claim 1 is in condition for allowance. Claims 2-6 and 18 depend from claim 1 and therefore should each be allowed for at least the reasons set forth above.

Double Patenting

Claims 1-6 are provisionally rejected for nonstatutory obviousness-type double patenting as unpatentable over claims 1-12 of co-pending Application No. 10/432,510. Applicants respectfully submit that the claimed invention is patentably distinct over Application No. 10/432,510. Claim 1 recites a finite range of for the ratio of equivalents of base to -COOH acid equivalents of the acid in the range 0.0033 - 0.2:1, which is not claimed in the co-pending application. Application No. 10/432,510 also claims a titanium orthoester along with a significantly wider and higher molar ratio of base to acid in claim 8 of 2-12 base to 1.5-3.5 acid

(or 0.57 - 8:1). Accordingly, Applicants request withdrawal of the obviousness-type double patenting rejection.

Conclusion

For all of the foregoing reasons, Applicants respectfully request reconsideration and allowance of the claims. Applicants invite the examiner to contact their undersigned representative if it appears that this may expedite examination.

Respectfully submitted,



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